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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/722,377	11/28/2000	Paul M.J. Schulze-Lefert	620-125	5106

7590

09/20/2002

Nixon & Vanderhye P C
Mary J Wilson
1100 North Glebe Road 8th Floor
Arlington, VA 22201-4714

EXAMINER

IBRAHIM, MEDINA AHMED

ART UNIT

PAPER NUMBER

1638

14

DATE MAILED: 09/20/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/722,377	Applicant(s) SCHULZE-LEFERT ET AL.	
	Examiner Medina Ibrahim	Art Unit 1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 July 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 74-89 is/are pending in the application.
- 4a) Of the above claim(s) 76, 77 and 86-89 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 74, 75 and 78-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>8</u> . | 6) <input type="checkbox"/> Other: |

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DETAILED ACTION

Election/Restriction

1. Applicant's election of Group I, claims 74-75 and 78-85, drawn to SEQ ID NO:2 or sequence encoding SEQ ID NO:1, in Paper No. 13 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)). The restriction requirement is made FINAL.

Claims 74-89 are pending in this application.

Claims 74-75 and 78-85, drawn to SEQ ID NO:1 encoding SEQ ID NO:2, are under examination.

Claims 76-77, drawn to SEQ ID NO:12 encoding SEQ ID NO:15, and claims 86-89, are withdrawn from consideration as being drawn to a non-elected invention.

Specification

2. The following guidelines illustrate the preferred layout and content for patent applications. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

The following order or arrangement is preferred in framing the specification and, except for the reference to the drawings, each of the lettered items should appear in upper case, without underling or bold type, as section headings. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) Title of the Invention.
- (b) Cross-Reference to Related Applications.
- (c) Statement Regarding Federally Sponsored Research or Development.

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- (d) Reference to a "Sequence Listing," a table, or a computer program listing appendix submitted on compact disc (see 37 CFR 1.52(e)(5)).
- (e) Background of the Invention.
 - 1. Field of the Invention.
 - 2. Description of the Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) Brief Summary of the Invention.
- (g) Brief Description of the Several Views of the Drawing(s).
- (h) Detailed Description of the Invention.
- (i) Claim or Claims (commencing on a separate sheet).
- (j) Abstract of the Disclosure (commencing on a separate sheet).
- (k) Drawings.
- (l) Sequence Listing, if on paper (see 37 CFR 1.821-1.825).

The specification is specifically objected to for missing parts (g) and (J).

The disclosure is also objected to because it contains an embedded hyperlink and/or other form of browser-executable code. For example, page 85, lines 16-17, cite hyperlink which is directed to an Internet address. The use of hyperlink is not permitted under USPTO current policy. Therefore, Applicant is required to delete the embedded hyperlink. See MPEP § 608.01.

Sequence Listing

Applicant's CRF and paper sequence listing have been entered. However, the disclosure, for example, page 19, lines 1-11; page 30, line 27; page 31, lines 1, 12-13; page 30, lines 3-4 15-17; and pages 97-101 recites sequences without sequence identifier or SEQ ID NO:. Applicants must submit a new CRF and paper copy of the Sequence Listing, including said sequence. Applicants must also amend the specification to include the SEQ ID NO for these sequences.

Information Disclosure Statement

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Initialed and dated copy of Applicant's IDS form 1449, Paper No. 8 is attached to the instant Office action.

Drawings

This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed. See the attached Notice of Draftsperson.

Claim Rejections - 35 USC § 112

3. Claims 74-75 and 78-85 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 74 is indefinite because SEQ ID NO:2 is not an amino acid sequence. It is suggested that "SEQ ID NO:2" be replaced with ---SEQ ID NO:1---. Dependent claims 78-85 are included in the rejection.

Claim 75 is indefinite because SEQ ID NO:1 is not a coding sequence. It is suggested that "SEQ ID NO:1" be replaced with ---SEQ ID NO:2---. Also, "shown in" does not define an open or closed language. ---comprising--- instead of "shown in" is suggested, if open language is intended.

In claims 75, 78, 80 and 82, "A" should be replaced with ----The isolated---, for proper dependency.

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In claims 79 and 81, a "complement" could be defined as a 2-mer. This does not seem to be Applicants' intention. Clarification is required.

In claim 83, "a vector suitable for transformation of a plant " is unclear. If Applicant intends --- a plant expressible vector---, the claim should be amended to recite so.

In claims 84-85, "heterologous polynucleotide of claim 74" lacks antecedence basis. It is suggested that "a heterologous" be replaced with ---the---; and ---wherein the polynucleotide is heterologous----- be inserted before the period.

In claim 85, ----plant---- should be inserted after "cell", for clarification.

Remarks

Claims 74-75 and 78-85 are free of the prior art of record.

Claims 74-75 and 78-85 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

No claim is allowed.

4. Papers relating to this application may be submitted to Technology Sector 1 by facsimile transmission. Papers should be faxed to Crystal Mall 1, Art Unit 1638, using fax number (703) 308-4242. All Technology Sector 1 fax machines are available to receive transmissions 24 hrs/day, 7 days/wk. Please note that the faxing of such papers must conform with the Notice published in the Official Gazette, 1096 OG 30, (November 15, 1989).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Medina A. Ibrahim whose telephone number is (703) 306-5822. The Examiner can normally be reached Monday -Tuesday from 8:00 AM to 5:00 PM and Wednesday-Thursday from 9:00AM to 3:00PM

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Paula Hutzell, can be reached at (703) 308-4310.

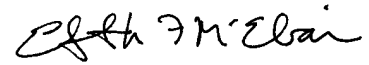
Any inquiry of a general nature or relating to the status of this application should be directed to the receptionist whose telephone number is (703) 308-0196.

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September 11, 2002
mai


ELIZABETH F. McELWAIN
PRIMARY EXAMINER
GROUP 1600